

MERRILL G. HASTINGS

IBLA 81-436

Decided November 17, 1981

Appeal from a decision of the Colorado State Office of the Bureau of Land Management designating the Castle Peak unit (CO-070-433) as a wilderness study area and declaring the Pisgah Mountain unit (CO-070-421) unsuitable as a wilderness study area.

Affirmed.

1. Appeals -- Federal Land Policy and Management Act of 1976: Wilderness -- Rules of Practice: Appeals: Burden of Proof -- Wilderness Act

An appellant or intervenor requesting this Board to reverse a Bureau of Land Management decision regarding the inclusion or exclusion of a unit of land as a wilderness study area must show the decision to be based on a clear and specific error of law or fact, otherwise the Board will affirm.

APPEARANCES: Merrill G. Hastings, pro se; Jerry G. Mallett, Resources Program Director of American Wilderness Alliance, for the intervenor; Dale D. Goble, Office of Solicitor, Department of the Interior, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

On November 14, 1980, the Colorado State Director of the Bureau of Land Management (BLM) published his final intensive Wilderness Inventory Decision under the authority of section 603 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782 (1976). Among those units identified as a wilderness study area (WSA) was unit CO-070-433 (Castle Peak), and among those units listed as no longer subject to wilderness review, because they were found to lack wilderness

characteristics, was unit CO-070-421 (Pisgah Mountain). ^{1/} Merrill G. Hastings, who owns a ranch a few miles from both of these areas, timely protested the State Director's final inventory decision with respect to these two named units. In response to this protest, BLM issued a letter, dated February 2, 1981, reaffirming BLM's original decision. Appeal was then taken by Hastings on February 26, 1981. ^{2/} On May 12, 1981, American Wilderness Alliance (Alliance) petitioned this Board for leave to intervene in this case with respect to the Pisgah Mountain unit. In its petition to intervene, Alliance states that it "concurs with the appellant that CO-070-421 (Pisgah Mountain) does indeed qualify as a wilderness study area and should be so considered."

Alliance has alleged that its interests and those of its members would be substantially impaired if the Board did not reverse the BLM decision as to Pisgah Mountain (CO-070-421). As no opposition to the request to intervene was voiced by BLM, we grant the petition of Alliance to intervene in this case. Cf. National Outdoor Coalition, 59 IBLA 291 (1981). We will consider the arguments of Alliance with those of Hastings in our consideration of the Pisgah Mountain unit.

In its decision BLM explained its reason for withholding this unit from further wilderness review:

The intensive inventory portion of the Pisgah Mountain Unit was found to have naturalness, but lacking in outstanding opportunities for either solitude or primitive and unconfined recreation. This decision was based on the unit's narrow configuration, combined with steep topography between drainages, rugged cliffs along the Colorado River and existence of only sparse vegetation to supply screening. The limitations presented by the topography and sparse vegetation of the unit were found to restrict existing opportunities for solitude and primitive and unconfined recreation to a point where they could not be considered outstanding.

Appellant asserts that the BLM decision

tries to justify that the steep topography of the unit, combined with the rugged cliffs along the Colorado River and the sparse vegetation restricts opportunities for solitude and primitive recreation when, in fact, these very attributes serve to enhance the basic characteristics of the unit as a Wilderness Study Area.

^{1/} This final intensive wilderness inventory decision, published in 45 FR 75584 (Nov. 14, 1980), shows the Castle Peak unit as containing 11,940 acres, and the Pisgah Mountain unit as containing 15,518 acres.

^{2/} By a petition dated June 5, 1981, appellant sought a hearing before an Administrative Law Judge to determine the merits of BLM's treatment of the two units that are the subject of the appeal. Our review of the facts and the law leads us to conclude that our discretion in such matters, 43 CFR 4.415, is most judiciously exercised by disallowing the requested hearing in this case.

Alliance asserts that the BLM recommendation with respect to this unit is "unreasonable, arbitrary, and capricious and will result in an irretrievable and irreversible loss of wilderness resources." Alliance further asserts that "the opportunities for sightseeing, photography, hunting, and river rafting are present and need not be uncommon to qualify for a wilderness experience." We note, however, that section 603(a) of FLPMA, 43 U.S.C. § 1782 (1976), incorporates by reference the characteristics of "wilderness" found in the Wilderness Act, 16 U.S.C. § 1131(c) (1976), which states in part that "wilderness * * * has outstanding opportunities for solitude or a primitive and unconfined type of recreation." (Emphasis added.) The Solicitor, who is representing BLM in this appeal, refers us also to page 13 of the Wilderness Inventory Handbook (WIH) which states, "Factors or elements influencing solitude may include size, natural screening, and the ability of the user to find a secluded spot."

[1] It appears that BLM's decision to eliminate the Pisgah Mountain unit from further examination as a wilderness area is bottomed on the conclusion that the unit's topography could force its visitors to compete for the limited usable recreation areas within it, and that its sparse vegetation would not screen distracting sights and sounds of other visitors. We note that appellant and the intervenor have the burden on appeal to "show that there is sufficient reason to change the result," Save the Glades Committee, 54 IBLA 215, 220 (1981), which is accomplished by "pointing out specific errors of law or fact in the decision below." Sierra Club, 54 IBLA 31, 37 (1981). See also Union Oil Co. (On Reconsideration), 58 IBLA 166, 171 (1981). Since this has not been done, we affirm the BLM decision respecting the Pisgah Mountain unit. As we have previously stated in Richard Leaumont, 54 IBLA 242, 245, 88 I.D. 490, 491 (1981), the evaluation of wilderness characteristics is by nature subjective and judgmental. Therefore, given the nature of BLM's review process, considerable deference must be given to BLM's conclusions. Mere disagreement with a conclusion is insufficient to justify a different result.

We next consider appellant's challenge to the BLM designation of the Castle Peak unit as a WSA. The BLM decision of February 2, 1981, from which this appeal is taken, states in part: "The imprints of man which have resulted from hunting and camping use, littering, old fire tower cables and limited firewood collection are minor, and do have the capability of being rehabilitated through natural forces and hand labor." The decision also noted that any intrusions are minimized by good screening created by dense vegetation. In response, Hastings contends that "to merely camouflage flaws does not vindicate them." He also asserts:

The Wilderness Act of 1964 previously cited does not provide for man's manufacture of designated wilderness areas * * *. Clearly artificial refurbishment of the land by man in an attempt to restore naturalness is not in keeping with the spirit of the Wilderness Act of 1964, and such an undertaking is outside the legal prerequisites of the Act and would be a noncompliance of the law.

It has been a long time belief of our society that only God can make a tree (ergo a wilderness), and certainly Congress did not intend to usurp that power when it enacted public law 88-577 as the 1964 Wilderness Act.

BLM guidelines, at page 14 of the WIH, do in fact provide for the consideration of land rehabilitation:

d. Possibility of the Area Returning to a Natural Condition. -- An inventory unit or portion of an inventory unit in which the imprint of man's work is substantially noticeable, but which otherwise contains wilderness characteristics, may be further considered for designation as a Wilderness Study Area when it is reasonable to expect the imprint of man's work to return or be returned to a substantially unnoticeable level either by natural processes or by hand labor. An example could be an abandoned railroad bed. Lands where imprints of man require artificial rehabilitation by the use of power machinery to return them to a natural condition, except litter collection and removal, will not be considered as meeting wilderness characteristic criteria.

An elaboration on the appropriateness of employing rehabilitation is provided in Organic Act Directive (OAD) 78-61, Change 3, July 12, 1979. It states:

Rehabilitation potential. Page 14 of the WIH identified the possibility of considering certain areas in which existing imprints of man could be rehabilitated through either natural processes or hand labor. Consideration may be given to rehabilitation potential only under the following conditions.

(1) An inventory unit must qualify as having wilderness characteristics without considering rehabilitation potential. In other words, rehabilitation potential should not be the basis for concluding that wilderness values exist in a unit. The intent is not to create wilderness where it does not exist.

(2) Rehabilitation potential should be considered only for those imprints of man that exist within a unit but are not so significant as to automatically disqualify the unit or portion of a unit.

(3) Rehabilitation potential should be considered only in rare and extreme cases.

(4) For rehabilitation potential to enter into the decision, it must be documented that rehabilitation through hand tools and/or natural processes is feasible in light of the magnitude of the area and technical, physical, scientific, and budgetary factors. It must also be documented

that either enough is known about rehabilitation potential of a given situation to reasonably predict its success or that natural rehabilitation has been established to the point where rehabilitation is certain.

These BLM guidelines formulate a land rehabilitation policy that appears consistent with the governing provisions of FLPMA, including the characterization of "wilderness" incorporated from the Wilderness Act, and appellant has presented no clear proof that these guidelines were not properly followed. Therefore, recognizing BLM's special responsibility, experience, and expertise in administering the wilderness program, we find that appellant has failed to clearly show an error of law or fact, and we affirm BLM's decision to designate the Castle Peak unit a WSA.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Director is affirmed with respect to both units.

Douglas E. Henriques
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Bruce R. Harris
Administrative Judge

